SINGLE BENCH

003

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 4330 / 2005

PETITIONER : Jay Prakash, S/o Bhim Nirmal, Aged about 28 years, R/o Village Cheecha, Post Bhathena, Tahsil- Patan, District- Durg (CG)

P.R. No. 4469/05 Presented by Shri Kunal Das dated 1-9-05

Versus

RESPONDENTS : 1. State of Chhattisgarh Through the Secretary, Panchayat & Social Welfare Department DKS Bhawan, Raipur (CG)

RECEIPT COPY 1.9.05 CLERK to A. G. BILASPUR

2. The Sub Divisional Officer, (Revenue) Patan, District-Durg (CG).

3. Janpad Panchayat, Patan Through its Secretary, Janpad Panchayat Patan, District- Durg (CG).

4. Kaushal Kumar Chandrakar, S/o Bhirkho Ram; Aged about 45 years, R/o Village Cheecha, Post Bhathena, Tahsil- Patan, District- Durg (CG)

31/8/05

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P. 4330/ ..... **सन् 2005** 050

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	14-9-2005 Mr. P.R. Patankar, counsel for the petitioner. Mr. Yashwant Singh Thakur, Govt. Advocate for the State of Chhattisgarh. Heard both the counsel. The petitioner has preferred this writ petition under Article 226/ 227 of the Constitution of India, questioning the legality, propriety and correctness of the order dated 23-8-2005 passed by the Sub-Divisional Officer (Revenue), the Specified Officer, whereby learned Specified Officer has ordered for recount of the votes. Brief facts leading to filing of this writ petition are that the petitioner herein and respondent No.4 contested election for the post of Panch of Gram Panchayat: Cheecha, Tehsil: Patan, District: Durg, and the result was declared on 20th January, 2005, after that a counting slip was prepared, copy of the same is Annexure P-1. According to the counting, the petitioner herein secured 45 votes, whereas respondent No.4 secured 32 votes. However, respondent No.4 being aggrieved by the said result, filed an election petition before the Specified Officer, Patan, on the ground that respondent No.4 in fact received 45 votes and the petitioner herein received 32 votes, but by mistake the votes which were secured by respondent No.4 were recorded in favour of the	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P. 4330 ..... **सन् 200** 5 051

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

petitioner and the votes which were secured by the petitioner herein were recorded in favour of respondent No.4, on account of this material irregularity, the result was affected. After counting was over, respondent No.4 asked for counting slip, but the same was not handed over to him, and a representation was also filed, but to no result. The petitioner herein raised preliminary objection against the election petition that copies of the petition were not delivered to him in terms of Rule 3 (2) of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (hereinafter referred to as 'the Rules, 1995'), but the same was rejected by the Specified Officer. Thereafter, the petitioner herein filed return to the election petition and after hearing counsel for the parties, learned Specified Officer ordered for recount.

In the election petition, respondent No.4's claim was that he secured 45 votes and the petitioner herein secured 32 votes, but by irregularity, the votes secured by respondent No.4 were entered in favour of the petitioner and the votes secured by the petitioner herein were entered in the account of respondent No.4, and on account of that, the result was affected. His further allegation is that at the end of counting, respondent No.4 asked for counting slip, but the same was not handed over to him. These facts have been denied by the petitioner

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P. 4330/ ..... **सन् 200** 5 052

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

herein. Therefore, as per the provisions of Rules 11 & 12 of the Rules, 1995, learned Specified Officer was required to frame issues on the pleading of the parties on which they were at variance, thereafter, learned Specified Officer was required to allow the parties to adduce their evidence in support of their claims, same has not been done by the Specified Officer. Without following the procedure as envisaged under the Rules, 1995, based on the election petition and reply, and after hearing the arguments, learned Specified Officer passed the impugned order which is perverse and illegal, as the same is not in conformity with Rules 11 & 12 of the Rules, 1995, and on this count the impugned order is liable to be set aside.

As far as the question of preliminary objection is concerned, learned counsel for the petitioner herein submits that the preliminary objection which was raised by the petitioner herein has already been raised in the reply of the election petition in paragraph 7, therefore, learned Specified Officer is required to frame issue on that point also and decide the objection at the time of final hearing of the election petition.

It is made clear that the order passed by the Specified Officer on preliminary objection raised by the petitioner herein will not be

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

053

मामला क्रमांक W.P.4330/ **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

treated as bar in deciding the said objection at the time of deciding the election petition on merit.

In view of the above order, the writ petition of the petitioner deserves to be allowed and the same is allowed. The order impugned is set aside.

Notice of this writ petition is not being issued to respondent No.4, as the order impugned is patently illegal and perverse, being contrary to Rules 11 & 12 of the Rules, 1995. Therefore, issuance of notice would unnecessarily delay the proceedings of the election petition filed by respondent No.4. However, if respondent No.4 is still aggrieved, he will be at liberty to move an application for modification of this order.

In view of this order, M.(W.)P.No.3521/2005 & I.A.No.7839/2005 stand disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

Soma